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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
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10/591,823

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Thomas Clos

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EXAMINER

SPISICH, MARK

ART UNIT

PAPER NUMBER

3727

NOTIFICATION DATE

DELIVERY MODE

02/23/2011

ELECTRONIC

Please find below and/or attached an Office communication concerning this application or proceeding.

The time period for reply, if any, is set in the attached communication.

Notice of the Office communication was sent electronically on above-indicated "Notification Date" to the following e-mail address(es):

US_cipkop@gsk.com

Office Action Summary

Application No.

10/591,823

Applicant(s)

CLOS ET AL.

Examiner

Mark Spisich

Art Unit

3727

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

- 1) ☒ Responsive to communication(s) filed on 17 November 2010.
- 2a) ☒ This action is **FINAL**. 2b) ☐ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

- 4) ☒ Claim(s) 1-3, 6-9 and 11-20 is/are pending in the application.
- 4a) Of the above claim(s) 8, 9 and 17-19 is/are withdrawn from consideration.
- 5) ☐ Claim(s) _____ is/are allowed.
- 6) ☒ Claim(s) 1-3, 6, 7, 11-16 and 20 is/are rejected.
- 7) ☐ Claim(s) _____ is/are objected to.
- 8) ☐ Claim(s) _____ are subject to restriction and/or election requirement.

Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on _____ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. § 119

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some * c) ☐ None of:
- ☐ Certified copies of the priority documents have been received.
 - ☐ Certified copies of the priority documents have been received in Application No. _____.
 - ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

* See the attached detailed Office action for a list of the certified copies not received.

Attachment(s)

- | | |
|--|---|
| 1) <input type="checkbox"/> Notice of References Cited (PTO-892) | 4) <input type="checkbox"/> Interview Summary (PTO-413) |
| 2) <input type="checkbox"/> Notice of Draftperson's Patent Drawing Review (PTO-948) | Paper No(s)/Mail Date. _____ |
| 3) <input checked="" type="checkbox"/> Information Disclosure Statement(s) (PTO/SB/08) | 5) <input type="checkbox"/> Notice of Informal Patent Application |
| Paper No(s)/Mail Date <u>11/17/2010</u> | 6) <input type="checkbox"/> Other: _____ |

DETAILED ACTION

Election/Restrictions

1. Claims 8,9 and 17-19 are withdrawn from further consideration pursuant to 37 CFR 1.142(b) as being drawn to a nonelected species, there being no allowable generic or linking claim. Election was made **without** traverse in the reply filed on 2 August 2010.

Claim Rejections - 35 USC § 112

2. Claim 16 is rejected under 35 U.S.C. 112, second paragraph, as being indefinite for failing to particularly point out and distinctly claim the subject matter which applicant regards as the invention. Claim 16 (lines 3-4) recites "a mass of a gel material or a mass of a polyurethane gel material" (emphasis added). Later in the claims (and the "remarks" as well), there is a reference to "the mass of polyurethane gel material" (claim 16, line 7). Which is it? Applicant cannot have it both ways in the same claim. The claim cannot leave the recitation of "A" or "B" and then imply that there is only "B".

Claim Rejections - 35 USC § 102

3. The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

A person shall be entitled to a patent unless –

(b) the invention was patented or described in a printed publication in this or a foreign country or in public use or on sale in this country, more than one year prior to the date of application for patent in the United States.

4. Claims 1-3,6,7,11 and 20 are rejected under 35 U.S.C. 102(b) as being anticipated by Blakeman (USP 2,706,825). The patent to Blakeman discloses a toothbrush head (11) attached to a handle (10) and supporting a flexible bristle carrier (20) at opposite ends thereof (21) leaving the region of the carrier between the ends

Art Unit: 3727

unsupported. The handle/head are preferably made of plastic (column 2, line 23).

Making the head of plastics as known today would provide some degree of flexure. The bending or twisting would be capable at least to a degree. Applicant is reminded that simple "capable of" or "adapted to" phrases are fairly broad, in particular when it is not accompanied by a difference in structure which might be said to result in such mode of operation.

Claim Rejections - 35 USC § 103

5. The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

6. Claims 14-16 are rejected under 35 U.S.C. 103(a) as being unpatentable over Blakeman (USP 2,706,825) in view of Moskovich et al (US PUB 2004/0025275). The patent to Blakeman discloses a bristle carrier (20) of rubber, plastic or essentially any elastic or flexible material (column 1, lines 64-70). The use of any known material which is known in the art (and such gels are known to be used in the art) and which has these properties, such as the gel disclosed in Moskovich (paragraph 0026), would be obvious to one having ordinary skill in the art.

7. Claim 12 is rejected under 35 U.S.C. 103(a) as being unpatentable over Blakeman (USP 2,706,825) in view of Weihrauch (USP 6,036,277). It would have been obvious to one of ordinary skill to use any known manner of securing the bristles (23) of

Blakeman. The manner recited in claim 12 is known in the art (see Weihrauch as well as the search report).

8. Claims 12 and 13 are rejected under 35 U.S.C. 103(a) as being unpatentable over Blakeman (USP 2,706,825) in view of WO 98/43514. The use of any known manner of securing the tufts (23) of Blakeman would be obvious to one having ordinary skill in the art, such as the manner shown in '514 (again, see search report).

Response to Arguments

9. Applicant's arguments filed 17 November 2010 have been fully considered but they are not persuasive. With regard to Blakeman, applicant simply added a "capable of" phrase to claim 1. The support (16) and handle (11) of the present application are integrally made of plastics material (e.g. polypropylene ("PP"), polyamide ("PA"), acrylonitril ("ABS") etc. as commonly used for the manufacture of toothbrushes (page 10, lines 20-22). The support (11) and handle (10) of Blakeman are also preferably made of plastics as well (column 2, line 22). The flexure is not a result of any difference in material of the support. It can only be assumed that it is a result of specific shape/configuration and relative size or thickness of the support; however, the claim is silent with regard to any such differences in structure between the claimed invention and that of the prior art. The attempt to define over the prior art solely in terms of a "capable of" phrase absent the corresponding structural differences fails to define over Blakeman. As a matter of degree, the plastic of the support (11) would almost certainly flex to some degree and be capable to some extent of twisting. As mentioned above, the carrier (20) of Blakeman "is made of a flexible material such as rubber, plastic, or

Art Unit: 3727

other substance relatively yieldable within prescribed limits" (column 1, lines 66-68).

Any of the materials of the present application (including the gel) would fall into this description. The use of gels in toothbrushes is known in the art (Moskovich '275). With regard to claim 16, it is pointed out that is still only requires a gel material, and not specifically a polyurethane gel material .

Conclusion

10. **THIS ACTION IS MADE FINAL.** Applicant is reminded of the extension of time policy as set forth in 37 CFR 1.136(a).

A shortened statutory period for reply to this final action is set to expire THREE MONTHS from the mailing date of this action. In the event a first reply is filed within TWO MONTHS of the mailing date of this final action and the advisory action is not mailed until after the end of the THREE-MONTH shortened statutory period, then the shortened statutory period will expire on the date the advisory action is mailed, and any extension fee pursuant to 37 CFR 1.136(a) will be calculated from the mailing date of the advisory action. In no event, however, will the statutory period for reply expire later than SIX MONTHS from the mailing date of this final action.

Any inquiry concerning this communication or earlier communications from the examiner should be directed to Mark Spisich whose telephone number is (571) 272-1278. The examiner can normally be reached on M-Th (5:30-3:00), Alternate Fri off.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Monica Carter can be reached on (571) 272-4475. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

Art Unit: 3727

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free). If you would like assistance from a USPTO Customer Service Representative or access to the automated information system, call 800-786-9199 (IN USA OR CANADA) or 571-272-1000.

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